Supreme Court, U.S.
FILED
OCT 22 1999
CLERK

(2)

No. 99-521

In the Supreme Court of the United States

OCTOBER TERM, 1999

LESLIE FITZGERALD, ELIZABETH HARLING, CHARLES HUGGINS

Petitioners

VERSUS

RICHARD STALDER, INDIVIDUALLY, AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL.

Respondents

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

Respondent, Natchitoches Parish School Board's, Brief In Opposition to Petition for Writ of Certiorari

UNGARINO & ECKERT
MATTHEW J. UNGARINO
MICHAEL J. TARLETON
Suite 1280, Lakeway Two
3850 North Causeway Boulevard
Metairie, Louisiana 70002
(504) 836-7565
Attorneys for Natchitoches Parish School Board, Defendant\Respond

Riverside Printing, L.L.C., 4939 Tchoupitoulas, N. O., LA 70115, (504) 897-5000

138P

PARTIES

The petition accurately lists the parties to this proceeding.

TABLE OF CONTENTS

PARTIES i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE/ACTION OF THE TRIAL AND APPELLATE COURTS 1

REASONS TO DENY THE WRIT 4

I. **THE FIRST TIME USE AND REGISTERING OF VEHICLES BROUGHT INTO LOUISIANA FROM OUT OF STATE AND THE COLLECTION OF LOCAL USE TAXES IN CONNECTION WITH THAT USE AND REGISTRATION DOES NOT VIOLATE THE COMMERCE CLAUSE OR THE EQUAL PROTECTION CLAUSE** 4

LAW 4

ANALYSIS 5

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES:

Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon, 511 U.S. 93 (1994) 5,7

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) 5-6

D.H. Holmes Company v. McNamara, 46 U.S. 24 (1988) 4

Halliburton Oil Well Cementing Company v. Riley, 373 U.S. 64 (1963) 2

Halliburton Oil Well Company v. Riley, 373 U.S. 64 (1963) 5

Williams vs Vermont, 472 U.S. 14 (1985) 9

STATEMENT OF THE CASE/ACTION OF THE TRIAL AND APPELLATE COURTS

Petitioners are residents who, upon moving to Louisiana, brought the vehicles owned by them into Louisiana that had been previously registered in a state other than Louisiana. Upon using their vehicle in Louisiana for the first time, petitioners were required to pay local use taxes on the current value of the vehicle they brought into Louisiana. These taxes were paid at the time the vehicle was registered with the State of Louisiana.

Petitioners initially filed a lawsuit alleging that various local taxing authorities, including the Natchitoches Parish School Board (hereinafter referred to as "School Board") through their agent, the Secretary of the Louisiana Department of Safety and Public Corrections and the Administrator of the Office of Motor Vehicles in his capacity as the Vehicle Commissioner for the State of Louisiana (hereinafter referred to as "the State") violated the Commerce Clause found within the United States Constitution and the Equal Protection Clause of the United States Constitution by failing to administer the proper credits against the local use taxes for sales taxes paid in the out-of state jurisdictions when the vehicles were originally purchased.

Petitioners abandoned these arguments and filed a Supplemental and Amending Petition, alleging that the practice of individuals moving into Louisiana and using and registering their vehicles for the first time in Louisiana and having to pay local use taxes, while individuals who had already used and registered their vehicles in Louisiana, but

were moving from parish to parish within Louisiana and not having to pay additional local use taxes was a violation of the Federal Commerce Clause and the Federal Equal Protection Clause. Petitioners sought to certify both a petitioner and defendant class. The District Court denied class certification, finding petitioners failed to put on sufficient evidence to prove the purported class representatives would adequately represent the class and failed to prove the presence of "common character" requirement.

Petitioners and the School Board filed cross motions for Summary Judgment, addressing the merits of petitioners' allegations. The Trial Court denied petitioners' Motion for Summary Judgment and granted the School Board's Motion for Summary Judgment. In making its ruling, the Trial Court held the United States Commerce Clause requires equal treatment for in-state and out-of state tax payers, if similarly situated. (Emphasis added) *Halliburton Oil Well Cementing Company v. Riley*, 373 U.S. 64 (1963).

The two groups of taxpayers being compared by petitioners in this litigation are not similarly situated and, therefore, the differential treatment between the two does not adversely affect interstate commerce in violation of the Federal Commerce and Equal Protection clauses. Specifically, the Trial Court found taxpayers similarly situated to a non-Louisiana resident bringing a vehicle into the State for the first time, are those Louisiana residents who purchase a vehicle within the state. All parties to this litigation agree the sales tax paid by the Louisiana residents is the same as the use tax paid by the non-Louisiana residents bringing a vehicle into the State for the first time. Therefore, both tax payers are treated equally under current state law.

The trial judge aptly pointed out that the petitioners are trying to compare apples and oranges, when trying to compare a non-resident bringing a vehicle into Louisiana for the first time with those Louisiana residents who have either paid sales tax on the vehicle when it was purchased in the State or brought the vehicle into the State and paid local use tax when it was first used and registered and then moved the vehicle from one local taxing jurisdiction to another. Once the vehicle has been used and registered within the State, as long as it moves from one local taxing jurisdiction to another within the State, interstate commerce is not affected, and the Federal Commerce and Equal Protection Clause do not come into play.

After the Trial Court denied petitioners' Motion for Summary Judgment and granted the School Board's Motion for Summary Judgment, petitioners sought writs with the First Circuit Court of Appeal on the Trial Court's judgment, denying class certification and denying their Motion for Summary Judgment. Petitioners filed an appeal with the First Circuit Court of Appeal addressing the Trial Court's granting of the School Board's Motion for Summary Judgment. The First Circuit Court of Appeal upheld the Trial Court's rulings denying class certification and finding there was no violation of the interstate commerce clause or the equal protection clause. Petitioners brought a petition for writ of certiorari to the Louisiana Supreme Court, which denied the writ. It is from these rulings that petitioners now seek a writ from this Honorable Court.

REASONS TO DENY THE WRIT

1. THE FIRST TIME USE AND REGISTERING OF VEHICLES BROUGHT INTO LOUISIANA FROM OUT OF STATE AND THE COLLECTION OF LOCAL USE TAXES IN CONNECTION WITH THAT USE AND REGISTRATION DOES NOT VIOLATE THE COMMERCE CLAUSE OR THE EQUAL PROTECTION CLAUSE.

LAW

The United States Supreme Court in *D.H. Holmes Company v. McNamara*, 46 U.S. 24 (1988) recognized the constitutionality of Louisiana's sales and use tax scheme, stating:

> The Louisiana taxing scheme is fairly apportioned, for it provides a credit against its use tax for sales taxes that have been paid in other states. (Citations omitted.)
>
> The Louisiana tax structure likewise, does not discriminate against interstate commerce. *D.H. Holmes, supra.*

"The first step in analyzing any law subject to judicial scrutiny under the United States Commerce Clause is to determine whether it "regulates even handedly with only incidental effects on the interstate commerce, or

discriminates against interstate commerce." (Citations omitted.) As we use the term here, "discrimination" simply means differential treatment of in-state and out-of state economic interest that benefits the former and burdens the latter." *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*, 511 U.S. 93 (1994).

The United States Supreme Court has held that a state's tax does not violate the commerce clause when the tax has a substantial nexus with the State, the tax is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to benefits provided by the State. *Complete Auto Transit, Inc. v. Brady* , 430 U.S. 274 (1977).

In *Halliburton Oil Well Company v. Riley*, 373 U.S. 64 (1963), the United States Supreme Court stated:

> The conclusion is inescapable: equal treatment for in-state and out of-state tax payers similarly situated is the condition precedent for a valid use tax on goods imported from out of state." (Emphasis added.)

ANALYSIS

In order to show the collection of local use taxes on vehicles brought into Louisiana by individuals moving into Louisiana and using the vehicle for the first time within the State violates the Commerce Clause, the petitioners must show the tax does not have a substantial nexus with Louisiana, the tax is not fairly apportioned and discriminates against interstate commerce, and the tax is not related to benefits provided by the State. *Complete Auto Transit,*

Inc., supra. There has been no issue raised, and petitioners cannot argue the collection of sales and use taxes on vehicles used within the State of Louisiana do not have a close nexus with Louisiana and are not related to benefits such as roads and police protection provided by the State for the use of the vehicles within the State. Therefore, the only issue in dispute is whether the collection of local use taxes from individuals moving into Louisiana, while not collecting local use taxes from Louisiana residents moving from one local taxing jurisdiction to another, discriminates against interstate commerce.

In alleging this practice does discriminate against interstate commerce, the petitioners have compared two separate, distinct and different taxable events. in other words, individuals moving into Louisiana for the first time are not "similarly situated" as individuals who already reside within the State and are simply moving from one local taxing jurisdiction to another. **Specifically, the only taxable event which affects interstate commerce is the initial use and registration of the vehicle within the State**. Therefore, in order to determine whether the registration and collection of local use taxes on vehicles brought into Louisiana by individuals relocating into Louisiana violates the Commerce Clause, it is necessary to compare that tax event with the tax event created when a resident of Louisiana purchases a vehicle within Louisiana and for the first time uses and registers it within the State. In both of these situations, individuals are using and registering their vehicles for the first time within the State, either because they purchased the vehicle within Louisiana or because they owned the vehicle outside of Louisiana and transferred it to Louisiana and registered it with the State. In both of these situations, the

individuals are treated identically. The State's sales and use taxes and local sales and use taxes are collected on both vehicles, based upon the value of the vehicle at the time the taxable event occurred, either the sale within Louisiana, or the bringing of the vehicle into Louisiana. Therefore, there is no differential treatment of in-state and out-of-state economic interest that benefits the former and burdens the latter. *Oregon Waste Systems, Inc., supra.*

Once both vehicles have been registered within the State of Louisiana, and become "Louisiana vehicles", they are treated identically when the use and registration is changed from one parish to another within Louisiana. The Trial Court recognized once the vehicle becomes a "Louisiana vehicle" and remains within Louisiana regardless of whether it stays in one local taxing jurisdiction or moves to various local taxing jurisdiction, **interstate commerce is not affected, and all owners of "Louisiana vehicles" are treated similarly**. Specifically, once a vehicle is used and registered in Louisiana and becomes a "Louisiana vehicle", no local taxing authority collects additional use taxes when a vehicle is moved from one location to another within Louisiana.

Petitioners are attempting to manufacture a Commerce Clause violation where none exits by comparing two separate, distinct and different tax events. As the Trial Court put it, petitioners are comparing apples and oranges. The first tax event occurs when the vehicle is initially used and registered within the State, whether that is based on a sale within Louisiana, or bringing a vehicle into Louisiana from another state. These tax events are treated equally by the State since the appropriate sales and use taxes are collected

on each vehicle. This is the only tax event which affects interstate commerce and intrastate commerce at the same time.

The second tax event deals with vehicles that move their use and registration from one parish to another within Louisiana. This clearly is an intrastate tax event and does not affect interstate commerce because both vehicles have already initially been used and registered with the State and any movement within Louisiana does not affect vehicles brought in from outside of Louisiana. Therefore, whether local tax authorities of Louisiana choose to collect local use taxes on vehicles moving from parish to parish has no effect on interstate commerce and has no effect on the Federal Commerce Clause and/or the Equal Protection Clause.

The Court should note that it is this initial inquiry as to whether the movement of vehicles from one parish to another, once they have been initially used and registered in Louisiana, effects interstate commerce that is determinative of the entire issue brought before this Court. Case law cited by petitioners, while being correct, does not address the critical issue of determining whether an individual bringing a vehicle into Louisiana for the first time is "similarly situated" to an individual who is moving a vehicle already used and registered within the State of Louisiana from one parish to another. The School Board contends these individuals are not "similarly situated" and, therefore, the case law cited to this Court by petitioners' counsel is not applicable to the real issue at hand. The facts of this case clearly indicate, as the Trial and Appellate Courts recognized, that an individual using and registering their vehicle for the first time in Louisiana, (whether it is to bring the vehicle from out of

state or an in-state purchase) is not "similarly situated" with an individual who has used and registered the vehicle within the State and is simply changing its location from one parish to another within the State.

The petitioners cite *Williams vs Vermont* 472U.S. 14 (1985) for the proposition that in-state and out-of-state taxpayers similarly situated should receive equal treatment. The factual basis of *Williams* is different then that in the current litigation. In *Williams*, vehicles registered for the first time in Vermont by new residents were charged an additional tax as compared with vehicles being registered for the first time in Vermont by old residents which were not charged an additional tax. While defendants agree that in-state and out-of-state taxpayers, similarly situated, should be treated equally, the two groups of taxpayers being compared by petitioners in the present litigation are not similarly situated and therefore, *Williams* is not relevant.

Petitioners argue the lower courts erred in focusing on the registration of a vehicle as the only event that affects interstate commerce. What petitioners fail to recognize is numerous individuals use vehicles within Louisiana without the necessity of registering those vehicles. Specifically, tourist and other short-term visitors are under no obligation to register their vehicles and therefore are not levied a tax under any circumstance. Therefore, while the tax is based upon use of the vehicle within the state, the triggering event for that tax is the registration of the vehicle within the state. As previously discussed, **individuals registering their vehicle for the first time within Louisiana, whether they are a new resident or an old resident are treated identically under the Louisiana tax scheme.**

Finally, petitioners argue that the local taxing authorities enforce their taxes only against persons who move from other states. This argument is clearly wrong and misleading based upon the facts agreed-upon by the parties to this litigation. It has never been contested that the local taxing authorities collect either sales or use taxes from individuals, regardless of whether they are new or old residents, using and registering their vehicles for the first time within Louisiana.

For these reasons, the writ should be denied.

CONCLUSION

For the reasons set forth above, it is the School Board's contention that the Trial and Louisiana First Circuit and Louisiana Supreme Court properly ruled in denying both petitioners' Motion for Class Certification and petitioners' Motion for Summary Judgment. No reason exists to grant this writ.

Respectfully submitted,

UNGARINO & ECKERT

MATTHEW J. UNGARINO (#15061)
MICHAEL J. TARLETON (#21388)
Suite 1280, Lakeway Two
3850 North Causeway Boulevard
Metairie, Louisiana 70002
(504) 836-7565
ATTORNEY FOR NATCHITOCHES PARISH SCHOOL BOARD, DEFENDANT/RESPONDENT